IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

MACA.No. 155 of 2004(G)

OPMV.558/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
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APPELLANT/ADDITIONAL 4TH RESPONDENT

P.S.NAZEER, ERACHIRA PUTHEN VEEDU,
CHEERANCHIRA P.O., CHANGANACHERRY.

BY ADV. SRI.HARUN-AL-RASHID

RESPONDENTS: PETITIONER & RESPONDENTS 1 TO 3 & ADDL.RESPONDENT
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1. MOLYKUTTY SEBASTIAN, D/O. SEBASTIAN,
KUTTIYANICKAL HOUSE, ADIVARA P.O.,
POONJAR SOUTH.

*** 2. AVIRACHAN S/O. MATHEW,**
PARAVARAKATHU HOUSE, MELAMPARA KARA,
KONDOOR VILLAGE. (DELETED)

*** R2 IS DELETED FROM THE ARRAY OF RESPONDENTS AS PER ORDER DATED 18/10/2004 IN IA NO. 3048/2004.**

3. THE NEW INDIA ASSURANCE COMPANY LIMITED
TO BE REPRESENTED BY THE DIVISIONAL MANAGER,
KOTTAYAM.

4. N.T.MOHANAN, S/O. THANKAPPAN,
NEERANANICKAL HOUSE, AMPARANIRAPPEL P.O.

5. TAHSILDAR, CHANGANACHERRY.

MACA NO. 155/2004 G

****6. ALICE ABRAHAM, W/O. AVIRACHAN,
PARAVAREKETHU HOUSE, AMBARENIREPPU P.O.,
THIDANAD.**

7. JOHNSON ABRAHAM, S/O. AVIRACHAN, -DO-

8. MATHEW P. ABRAHAM, S/O. AVIRACHAN, -DO-

****ADDL. R6 TO R8 ARE IMPLEADED AS PER ORDER DATED 18/10/2004 IN IA NO. 3048/2004.**

**BY ADVS. SRI.BABY THOMAS --- R4
SRI.GIGIMON ISSAC
SRI.ROJO J.THURUTHIPARA
SRI.PMM.NAJEEB KHAN -- R3**

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.A.C.A.No.155 OF 2004

Dated 20th June, 2007

JUDGMENT

Koshy,J.

Appellant was the registered owner of the vehicle, bearing registration No.KL-5-1015, which involved in an accident by which, first respondent herein sustained severe injuries. She claimed compensation. Tribunal awarded a compensation of Rs.32,000/= with interest. It was found that the accident occurred due to the negligence of the driver of the vehicle. It was also found that the driver had no valid driving licence at that time. Case of the appellant was that he was not the actual owner as the vehicle was transferred on 12.2.1991 to one Sabu, S/o.Gopi. The accident occurred only in December, 1991. Therefore, the accident was after the transfer of the vehicle. The said Sabu was not a prty to the claim petition, but, originally another person was impleaded as the owner. Sabu might have transferred the vehicle to that person. But, when registered owner was known, he was made a party. There is no dispute that at the time of the accident the appellant was the registered owner and insurance policy was in his name. Further, there is no case for the appellant that the driver had a valid driving licence at that time. The finding that the driver had no driving licence at the time of the accident is not disputed by any of the parties including the driver. Since there is violation of policy conditions as

the vehicle was driven by a person who was not having driving licence, Tribunal directed the insurance company to pay the compensation and insurance company was allowed to recover the amount from the insured. Insurance policy would show that the appellant was the insured during the relevant time. It is true that vehicle can be transferred on payment of consideration and delivery of the vehicle. As held by the Supreme Court in ***Vasantha Viswanathan*** v. ***V.K.Elayalwar*** (2001 AIR SCW 3304) and ***Dr.T.V.Jose*** v. ***Chacko P.M. @ Thankachan and others*** (AIR 2001 SC 3939) merely because name of the transferor owner had not been changed in the records of RTO, it does not mean that ownership of vehicle is not transferred. But, as far as third parties are concerned, registered owner is liable. The Supreme Court in ***Rikhi Ram and another*** v. ***Smt.Sukhrania and others*** (AIR 2003 SC 1446)and ***G.Govindan*** v. ***New India Assurance Co. Ltd.*** (AIR 1999 SC 1398) held that notwithstanding the transfer of the vehicle insurance company will continue to be liable if the vehicle is insured at the time of accident. In this case, it was found that the vehicle was covered by valid policy issued by the insurance company and insurance company has already paid the amount. Then the question is from whom the insurance company can recover the amount. Liability of the insurance company with the insured is purely contractual. Even though there is liability for the insurance company to

third party, there is a statutory liability for the insured. Insurance company can recover the amount only from the insured. Notwithstanding some mistakes committed by the Tribunal, admittedly, the insured was the appellant. Therefore, insurance company can recover the amount from the appellant. So, we see no ground to interfere with the same. It is stated that at the time of accident actually the vehicle was owned by the second respondent who subsequently died and his legal representatives are impleaded. It has also come out in evidence that he has taken delivery of the vehicle from the police station and appellant was in Saudi Arabia at the relevant time. Appellant is free to recover the amount from the transferee who was the real owner at the relevant time. However, insurance company is entitled to recover the amount from the insured as they have contract only with the appellant.

The appeal is dismissed without prejudice to the right of the appellant to recover the amount from the real owner.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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